IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 645

JOSEPH LEE JONES and BARBARA JO JONES,

Petitioners,

—v.—

ALFRED H. MAYER COMPANY, a corporation, ALFRED REALTY COMPANY, a corporation, PADDOCK COUNTRY CLUB, INC., a corporation, ALFRED H. MAYER, an individual, and an officer of the above corporations,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF AMICUS CURIAE OF THE AMERICAN CIVIL LIBERTIES UNION AND THE ST. LOUIS CIVIL LIBERTIES COMMITTEE

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE*

The American Civil Liberties Union and its affiliate, the St. Louis Civil Liberties Committee, are private, non-profit, membership corporations engaged solely in the defense of the Bill of Rights and the Civil War Amendments. Our interest in filing this brief is prompted by our belief that the Constitution prohibits the rank racial discrimination which is at issue in this case.

The ACLU opposes all housing discrimination based on race, creed, color, national origin, or political affiliation. One of the great principles of civil liberty—ranking with

* Petitioners have consented to the filing of this brief. Respondents' attorneys did not reply to movant's letter requesting consent.

due process, freedom of speech and religion—is that no man is to be treated on the basis of any group classification. This non-discriminatory treatment is most of all necessary in meeting the basic needs of food, clothing, and shelter. With regard to shelter, that necessity is growing as population, particularly in urban and suburban areas, is rapidly increasing.

In order to present these views in constitutional terms, we move for leave to file the attached brief.

Respectfully submitted,

MELVIN L. WULF
Attorney for Movant

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BRIEF OF AMERICAN CIVIL LIBERTIES UNION AND THE ST. LOUIS CIVIL LIBERTIES COMMITTEE, AMICUS CURIAE

Interest of Amici

The interest of amici is set out in the motion for leave to file, *supra*.

Statement of the Case

According to the complaint, the allegations of which are deemed true for the purposes of this proceeding, the petitioners, responding to an advertisement in the *St. Louis*

Post-Dispatch, sought to purchase a house in the Paddock Woods subdivision, owned and developed by the Alfred H. Mayer Company. This subdivision, planned to house about a thousand persons, was part of a larger development planned for occupancy by about 2,700 families.

The developer refused to sell to the petitioners, husband and wife, on the sole ground that the petitioner-husband was a Negro and it was the developer's policy to exclude Negroes from the development.

Petitioners' suit against the developer and its real estate agent was dismissed by the District Court and the dismissal was affirmed by the Court of Appeals on the ground that no state action was involved in the discrimination and hence there was no violation of the Fourteenth Amendment.

Scope of This Brief

This brief is addressed to one question: whether the developer of what for all practical purposes is a residential community of 2,700 families (and hence more than 10,000 persons) may constitutionally bar the residents from associating with persons of a particular race.

ARGUMENT

I.

Feudal England, in its early stage, rested upon the sovereignty of land ownership. The lord of the manor exercised complete dominion over the manor. No one, not even the king, could enter without his consent. The serf or villein had no rights enforceable against the lord of

the manor. Until the development of the common law and the "law of the land" concept, it was prudence alone, and not right or justice, which impelled the lord generally to honor the "custom of the manor." 1 Trevelyan, *History of England,* 199-200 (1954).

Traditional feudalism disappeared long before the settlement of colonial America and America's frontier economy was hardly receptive to the manorial system. But more important, the freedom-loving individualists who declared their independence of England and established the Constitution could never have accepted the concept of sovereignty over human beings by reason of the ownership of the land on which they lived.

The twentieth century brought with it a new form of the feudal manor, the company town. The lord of the manor was a large, impersonal corporation rather than an individual, but the basic principle of sovereignty over persons by reason of ownership of the land on which they live was the same. Chickasaw, Alabama, had "all the characteristics of any other American town," with but one exception—the prevalence of notices reading: "This is Private Property." *Marsh* v. *Alabama,* 326 U. S. 501, 502-503 (1946).

In *Marsh,* the Court held that whatever economic dominion an owner might exercise over the land to which he has legal title, he could not close the gates to the Constitution. The "preservation of a free society," the Court said, "is so far dependent upon the right of each individual citizen to receive such literature as he himself might desire that a municipality could not without jeopardizing that vital individual freedom, prohibit door to door distribution

of literature." (*Ibid.*, p. 505.) "[I]t is clear," the Court continued, "That had the people of Chickasaw owned all the homes, and all the stores, and all the streets, and all the sidewalks, all those owners together could not have set up a municipal government with sufficient power to pass an ordinance completely barring the distribution of religious literature." The Court answered in the negative the question, "Can those people who live in or come to Chickasaw be denied freedom of press and religion simply because a single company has legal title to all the town?" (*Ibid.*)

It is important to note that while the plaintiff-protagonist in that controversy was a non-resident Jehovah's Witness who was forbidden to distribute religious literature to the inhabitants of the town, the emphasis of the Court's decision is on right of the inhabitants of the community to receive the literature, or perhaps even more accurately the safeguarding of a democratic community.

> Many people in the United States [the Court said] live in company-owned towns. These people, just as residents of municipalities, are free citizens of their State and country. Just as other citizens they must make decisions which affect the welfare of community and nation. To act as good citizens they must be properly informed. In order to enable them to be properly informed their information must be uncensored. There is no more reason for depriving these people of the liberties guaranteed by the First and Fourteenth Amendments than there is for curtailing these freedoms with respect to any other citizen. (*Ibid.*, p. 508.)

The crux of the decision is found in the Court's statement at the conclusion of its opinion that the circumstance

that the property rights to the premises where the deprivation of liberty, here involved, took place, were held by others than the public, is not sufficient to justify the State's permitting a corporation to govern a community of citizens so as to restrict their fundamental freedoms." (*Ibid.*)

Company towns of the Chickasaw type may be less prevalent today than they were in 1946, but it is certain that residential developments of the Paddock Woods type are more numerous than company towns ever were and are growing more numerous every day. Many millions of Americans today live in such developments. The Paddock Woods complex alone is planned for more than ten thousand inhabitants, equalling or surpassing in population hundreds of American cities. (The United States Census Bureau lists officially and the Post Office Department assigns Zip Code numbers to places, incorporated and unincorporated, of 2,500 or more population.) These developments, no less than the Chickasaw company town, are *de facto* municipalities, states within states. This is quite clear from the allegations of the complaint (deemed true for the purposes of this appeal):

> Defendants Alfred H. Mayer Company, Alfred Realty Company and Alfred H. Mayer have prepared or will prepare a deed embodying certain restrictions on the use of the property sold to individual buyers in said subdivision and on that land which common to all residents and have the same recorded along with the deeds delivered to those buying homes, and an association of the residents will be formed which will have the power to enforce these restrictions against owners of homes within the subdivision, through judicial recourse if necessary, which power is the equivalent

of the power to design and enforce zoning ordinances and the power to function as a municipal government generally. Community facilities and services will be provided and performed under the direction of a Board of Trustees appointed by Defendant Alfred H. Mayer, which will be granted the power to levy assessments, and to collect these assessments through judicial action in case of default, including the establishment of liens on properties located in said subdivision and to make contracts for the performance of the services for the benefit of Paddock Woods residents, which powers are equivalent to the function of a municipal government.

As Justice Frankfurter said in his concurring opinion in *Marsh* (at p. 510), "a company-owned town is a town." So too, we submit, is a company-owned development housing more than ten thousand individuals. The major difference between the Chickasaw-Paddock Woods type of community and the convertional American town or small city is that in the former, as in a feudal manor, principal governmental power is possessed and exercised by the proprietor rather than the people. But the fact that governmental power is centralized in an individual or corporation rather than dispersed among the governed is hardly any reason to exclude the latter from the umbrella of constitutional protection. If anything, the reverse should be the case. In the conventional municipality it would be the people themselves who would decide whether Jehovah's Witnesses should be permitted to distribute their literature among them. Residents wishing to be exposed to the ideas in the literature could utilize the usual democratic process of appealing to the community and persuading a majority

of the citizens of the correctness of their position. In Chickasaw-Paddock Woods this method is unavailable; the decision is made not by the people but for them. If, then, as the Court pointed out in *Marsh,* the majority of the people could not constitutionally censor what the minority reads or hears, certainly an individual proprietor cannot.

Property rights are important in our democratic system, but civil liberties are even more important. As the Court said in *Marsh* (at p. 509),

> When we balance the Constitutional rights of owners of property against those of the people to enjoy freedom of press and religion, as we must here, we remain mindful of the fact that the latter occupy a preferred position. * * * In our view the circumstance that the property rights to the premises where the deprivation of liberty, here involved, took place, were held by others than the public, is not sufficient to justify the State's permitting a corporation to govern a community of citizens so as to restrict their fundamental liberties * * * .

"Title to property as defined by State law," said Justice Frankfurter (*ibid.,* p. 511) "controls property relations; it cannot control issues of civil liberties which arise precisely because a company town is a town as well as a congeries of property relations."

Marsh v. *Alabama* has never been overruled. On the contrary, it was recently heavily relied upon, and thus reaffirmed, in *Evans* v. *Newton,* 382 U. S. 296 (1966). In that case, the Court held that a park which differed from the

conventional municipal park only in that it was privately owned could not constitutionally exclude Negroes from entering on the same terms as whites. "A town," the Court said (at p. 299), "may be privately owned and managed, but that does not necessarily allow the company to treat it as if it were wholly in the private sector. . . . [W]hen private individuals or groups are endowed by the State with powers or functions governmental in nature, they become agencies or instrumentalities of the State and subject to its constitutional limitations."

The basic fact pattern in *Marsh* is not distinguishable from that presented in this case; factually there is no essential difference between Chickasaw and Paddock Woods. Both are communities of people within the United States and both, we submit, are subject to the constitutional principles that protect people living in American communities. The Gulf Shipbuilding Corporation could not withdraw Chickasaw from the United States and its Constitution; neither can the defendants withdraw Paddock Woods.

It is not material that *Marsh* dealt with the First Amendment right of freedom of speech and press whereas the present case deals with the Fourteenth Amendment freedom from racial discrimination. As we will shortly indicate, this case too deals with a First Amendment right; but even if it did not, the result should be the same. *Evans* v. *Newton, supra,* dealt with racial discrimination but the Court held *Marsh* applicable and determinative. The preferred position of constitutional freedoms in respect to property interests is not limited to First Amendment rights but extends to the right to equality secured by the Fourteenth Amendment. Footnote 4 in *United States* v. *Carolene*

Products Co., 304 U. S. 144, 151 (1938), is not limited to First Amendment freedoms. It specifically suggests that "prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry." It was because of the superiority of racial equality over property rights in our hierarchy of democratic values that Abraham Lincoln issued the Emanicipation Proclamation taking from slave owners what the Court had held in *Dred Scott* v. *Sanford*, 19 How. 393, 450 (1857), to be their property of which they could not be deprived without due process of law.

Nor is it material that the plaintiff in *Marsh* sought only to distribute literature in the community, not to live there. Suppose Grace Marsh had been an employee of the Gulf Shipbuilding Corporation and wished to live in Chickasaw. Would the Court have sanctioned her exclusion solely because of her religious affiliation?

Exclusion of groups deemed inferior from the residential areas of the dominant groups has a long and ignoble history. It can be traced from the walled Jewish ghettoes of medieval Europe to the *apartheid* of contemporary South Africa. If Jehovah's Witnesses can be excluded from Chickasaw and Negroes from Paddock Woods, Catholics, Jews, persons of Asian descent, political radicals, paupers and any other socially, culturally, economically or politically identifiable groups can be excluded from other communities. The ultimate result could well be a country marked by a series of monolithic islands barred to all but white and Anglo-Saxon Protestants.

There was a time when our national legislative policy reflected such an exclusionary policy for the country as a whole. Persons of Chinese or Japanese descent could not enter the country at all; others, only on the basis of a national origins quota system whose purpose it was to exclude as far as possible non-Anglo Saxons. Fortunately, we have outgrown this mythology of racial superiority, and both Asian exclusion and the national origins quota system have been ended in the Immigration Act of 1965.

Because the plenary powers of Congress in the area of immigration were not subject to judicial scrutiny, this exclusionary policy was held immune from judicial challenge. *Chinese Exclusion Cases,* 130 U. S. 581 (1889). But where the Court has had jurisdiction, where the issue has been a citizen's right of residence, it has indicated a clear policy antagonistic to limitations on the right of Americans to live where they want to. Moreover, although no single rationale has evolved upon which to predicate this policy, there is no doubt that it is based upon constitutional principles.

Thus, in *Meyer* v. *Nebraska,* 262 U. S. 390, 399 (1923), the Court included freedom to "establish a home" among the liberties guaranteed by the due process clause.

In *Buchanan* v. *Warley,* 245 U. S. 60 (1917), the Court, reflecting the constitutional policy of the time, somewhat artificially utilized property right concepts to invalidate an ordinance forbidding Negro occupation of residences in white neighborhoods.

In *Edwards* v. *California,* 314 U. S. 160 (1941), the Court was unanimous in its decision that the State of California

could not constitutionally exclude paupers from residing within its borders, although the Justices could not agree on a rationale upon which to base the decision. The majority of the Court, again somewhat artificially, used the Constitution's commerce clause to justify its determination. Mr. Justice Douglas, joined by Justices Black and Murphy, found it difficult to equate human beings with "cattle, fruit, steel and coal" (*ibid.*, p. 177) and invoked the privileges and immunities clause as basis for the Court's decision. Justice Jackson, in a separate opinion, reached the same conclusion. But what all members of the Court agreed upon was that economic and property considerations did not constitutionally sanction exclusion of poor persons from residing within the state.

In *Korematsu* v. *United States*, 323 U. S. 214 (1944), a divided Court upheld by reason of the compelling exigencies of war and the real possibility of enemy invasion the government's power to exclude persons of Japanese descent to reside on the Pacific coast. Even if this decision should be followed today, which is far from certain, its justification rests upon the paramountcy of national defense, not racial prejudice or even (as in the present case) profit-making motivations.

In *Housing Authority of Milwaukee* v. *Lawson*, 350 U. S. 882 (1955) the Court refused to review a decision by the Wisconsin Supreme Court (270 Wis. 269) holding unconstitutional a provision in the United States Housing Act (42 U. S. C. §141C) excluding from Federally financed housing persons who are members of organizations designated as subversive by the Attorney General.

Implicit in these decisions is a constitutional policy (which might even have echo in the Third Amendment)

of freedom of access to one's home and the place he seeks to make his home. This, we suggest, is a strong policy, sufficiently strong to subject to an exacting judicial scrutiny any claim that a particular proprietorship is so private that it immunizes from judicial interference a directly contrary exclusionary policy. This exacting judicial scrutiny is required not only because an important constitutional freedom is at stake but also because the victim of the deprivation is a member of a discrete and insular minority, a group for whose particular protection the Thirteenth and Fourteenth Amendments were adopted. *Slaughter-House Cases*, 16 Wall. 36, 71-72 (1873). This concurrence of the demands of freedom and equality would impose upon the courts an obligation of liberality in finding a constitutionally sufficient nexus between the exclusion and state action even where the discriminator and area of discrimination are small. Cf. *Katzenbach* v. *McClung*, 379 U. S. 294 (1964); *Wickard* v. *Filburn*, 317 U. S. 111 (1942).[1] Where, as in the present case, the area of discrimination is a community of more than 10,000 population and the discriminator a *de facto* state within a state, even passive acquiescence by the state government should be sufficient, we submit, to invoke the courts' protective power under the Fourteenth Amendment.

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[1] *Katzenbach* v. *McClung* was an equality case in the guise of commerce, but *Wickard* v. *Filburn* was pure commerce. In that case the Court found a nexus between 239 bushels of wheat grown by a farmer for home consumption on the one hand and the flow of interstate commerce on the other sufficient to justify national jurisdiction. Should more be required where the interest seeking judicial protection is not commerce but a concurrence of freedom and equality?

II.

We submit that even if the exacting judicial scrutiny required in civil rights cases were limited to First Amendment freedoms it would be required in the present case. Freedom of association, we suggest, is involved in this case no less than racial equality.

Initially we note that the freedom of association secured by the First Amendment is not limited to political association. The free exercise of religion clause certainly protects freedom of religious association, but beyond that the Amendment guarantees freedom of other forms of association. *National Association for the Advancement of Colored People* v. *Alabama,* 357 U. S. 449 (1958); *National Association for the Advancement of Colored People* v. *Button,* 371 U. S. 415 (1963). As the Court pointed out in *Griswold* v. *Connecticut,* 381 U. S. 479, 483 (1965), it has "protected forms of 'association' that are not political in the customary sense but pertain to the social, legal, and economic benefit of the members." Other decisions of the Court have extended First Amendment protection to aesthetic and cultural expressions. *Joseph Burstyn, Inc.* v. *Wilson,* 343 U. S. 495 (1952); *Kingsley Picture Corp.* v. *Regents,* 360 U. S. 684 (1959); cf. *Meyer* v. *Nebraska,* 262 U. S. 390 (1923); *Farrington* v. *Tokushige,* 273 U. S. 284 (1927). *Griswold* holds that so personal an association as that expressed in marital relations between husband and wife are within the penumbra of Bill of Rights protection. So, too, we submit is the right to live in a racially and religiously integrated community.

"We wanted a land," Mr. Justice Douglas has said, "where our people can be exposed to all the diverse creeds

and cultures of the world." *Dennis* v. *United States,* 341 U. S. 494, 585 (1951) (dissent). We want too a land whose communities are microcosms of that land and associate within themselves persons of diverse creeds, cultures and skin colors.

It has long been recognized that although the protagonist in a challenge based upon the First Amendment's guarantees of freedom of speech or press is the individual whose right to express himself has been restricted, no less a beneficiary of the suit and of the Amendment is the community which has been barred from hearing or reading what he has to say. As Professor Chafee noted:

> The First Amendment protects two kinds of interests in free speech. There is an individual interest, the need of many men to express their opinions on matters vital to them if life is to be worth living, and a social interest in the attainment of truth, so that the country may not only adopt the wisest course of action but carry it out in the wisest way. Chafee, *Free Speech in the United States,* 33 (1941).

If a customs official excludes Ulysses from the United States,[2] or a postmaster deprives a magazine of its second class mailing privileges because of his dissatisfaction with its contents,[3] or if Congress places obstacles to the receipt of Communist propaganda from abroad,[4] it is the receiving public which is hurt, no less than the sending author.

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[2] *United States* v. *One Book Called Ulysses,* 5 F. Supp. 182 (1933) affirmed 72 F. (2d) 705 (1934).

[3] *Hannegan* v. *Esquire,* 327 U. S. 146 (1946).

[4] *Lamont* v. *Postmaster General,* 381 U. S. 301 (1965).

Social scientists have found that racial segregation is harmful not only to the Negro minority but to the white majority as well.[5] If Paddock Woods has no Negroes in its houses and apartments, it will have no Negroes in its schools, churches, parks and playgrounds. Can it be doubted that the white children of Paddock Woods will suffer harm because of this isolation during the formative years of their lives from all contact with members of racial groups which make up a significant part of the American society? In *Sweatt* v. *Painter*, 339 U. S. 629 (1950), the Court held that Negro students who receive their law training in schools which are exclusively Negro are disadvantaged after admission to the bar because they must practice in a judicial system which reflects the racial complexion of the society of which it is a part. May not the same be said to be true in respect to white children raised and educated in an all-white community? In sum, may it not be that the white residents of Paddock Woods are being deprived of their right of association with non-whites, to the injury of themselves, their children and the values of American democracy?

If the Court should hold that the Civil Rights Act of 1866, 42 U. S. C. Sec. 1982, is not applicable in this case, it is no answer to the requirements of the Fourteenth Amendment to suggest that the remedy lies with the legislature. If, as we suggest, First Amendment freedoms are at issue in this case, the rights of neither the plaintiffs nor the residents of Paddock Woods can be curtailed by legislative inaction any more than they can be by legislative action.

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[5] Clark, *Prejudice and Your Child*, ch. 4 (1955); Deutscher and Chein, *The Psychological Effects of Enforced Segregation: A Survey of Social Science Opinion*, 26 J. Psychol. 259 (1948).

As the Court said in *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624, 638 (1943):

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no election.

The United States Congress submitted to the American people a constitutional amendment barring poll taxes in elections for Federal officials. It quite clearly refused to extend the prohibition to elections for state officials. Nevertheless, this Court, with but one Justice dissenting, held unconstitutional state poll tax laws applicable to elections for state offices. *Harper* v. *Virginia State Board of Elections,* 383 U. S. 663 (1966). And even if this case did not involve a First Amendment freedom the result would be the same. In *Harper* the Court found it unnecessary to decide the case on First Amendment grounds and expressly decided it on the basis of the equal protection clause of the Fourteenth Amendment (*ibid.,* p. 685). If this Court should hold that Congress has not availed itself of the powers conferred by Section 5 of the Fourteenth Amendment, the courts nevertheless have a responsibility to give meaningful effect to the Amendment.

To assert that no white is required to live in Paddock Woods and if he wants to live in a multi-racial, multi-religious or multi-cultural community he can look for a

home or apartment elsewhere, is to invoke a legalistic fiction which has long been discarded. Cf. *Bailey* v. *Alabama*, 219 U. S. 219 (1911). It assumes that the owners of Paddock Woods and the individual seeking to buy a house there stand on equal footing and have equal bargaining power. This was the rationale underlying such obsolete freedom-of-contract cases as *Adair* v. *United States*, 208 U. S. 161 (1908) and *Adkins* v. *Children's Hospital*, 261 U. S. 525 (1923). Like jobs, "housing is a necessary of life," as Justice Holmes pointed out. *Block* v. *Hirsch*, 256 U. S. 135, 156 (1921). Persons employed in or near Paddock Woods may have little choice but to live there. This is not a case of a person excluded from a particular house or even a particular street because the owner or owners refuse to sell or rent to Negroes. What we have here is exclusion from an entire community planned for more than 10,000 persons of anyone who is himself a Negro or wishes to live in a community with other Americans irrespective of their color.

In *Martin* v. *Struthers*, 319 U. S. 141 (1943) the Court, in holding unconstitutional a city ordinance forbidding knocking on doors or ringing doorbells in order to distribute literature to home occupants, said (at pp. 148-149):

> • • • The National Institute of Municipal Law Officers has proposed a form of regulation to its member cities which would make it an offense for any person to ring the bell of a householder who has appropriately indicated that he is unwilling to be disturbed. This or any similar regulation leaves the decision as whether distributors of literature may lawfully call at a home in defiance of the previously expressed will of the occupant and, in addition, can by identification

devices control the abuse of the privilege by criminals posing as canvassers. In any case the problem must be worked out by each community for itself with due respect for the constitutional rights of those desiring to distribute literature and those desiring to receive it, as well as those who choose to exclude such distributors from the house.

The point of this case is that under the First Amendment the decision whether to receive or reject pamphlet distributors must be made by each individual for himself; it cannot constitutionally be made for him by those governing the community in which he lives. *Marsh* v. *Alabama* held that this principle is applicable even if the governors of the community are a single corporation or a single proprietor.

The same principle, we submit, is applicable here. One who does not wish to reside next door to a Negro family cannot constitutionally be compelled to do so. He has the right to check his prospective neighbors before he decides to purchase a house. But the decision is his own; it can no more be constitutionally made for him by a policy of the community to exclude Negroes than can a policy of the community to exclude Jehovah's Witnesses or the literature they distribute. Nor has he any right to demand that his disinclination to live in the same community with Negroes shall be translated into a general policy depriving less prejudiced persons of the freedom to associate with Americans of any color or creed.

CONCLUSION

In *Smith* v. *Allwright*, 321 U. S. 649 (1944) the Court held that where the selection of candidates for public office is entrusted by statute to political parties, a political party in making its selection at a primary election is a state agency and hence may not under the Fourteenth Amendment exclude Negroes from such elections. In *Terry* v. *Adams*, 345 U. S. 461 (1953) the Court refused to allow itself to be blinded to reality by the absence of any specific statute and recognized that in fact primaries are part of the election process even in the absence of any statute. In *Marsh* v. *Alabama*, *supra*, the Court recognized that a community is a community even if it is not legally incorporated as a municipality and that the Constitution does not because of that fact stop at its gates. Were a *de jure* municipality to have adopted the exclusionary policy of Paddock Woods there could be no doubt as to its unconstitutionality. *Buchanan* v. *Warley*, *supra*. We submit that in the present case as in *Terry* v. *Adams* and *Marsh* v. *Alabama*, the Court should recognize and give legal effect to the reality that the Paddock Woods complex is a *de facto* municipality subject to the mandates of the United States Constitution.

Respectfully submitted,

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